

The Fredrickson Home

"We are dedicated to enhancing the long-term quality of life for adults with Developmental Disabilities(DD) by encouraging them to live as individuals in a caring environment."

December 7, 2001

State of Washington, Dept. of Health and
State of Washington, Board of Health
New Market Industrial Campus, Bldg. 2
P.O. Box 47820
Olympia, WA 98504-7820

Dear Interested Parties,

I am saddened to hear that the Department of Health(DOH) and the Board of Health are claiming to finalize their rules regarding food handler cards in Adult Family Homes(AFHs) with no plans to re-open the issue. When I first heard about this issue, I thought it was a joke considering how inappropriate the inclusion of AFHs into this "institutional operations" definition and rule was. Additionally, it seemed obvious that the Administrative Procedures Act(APA) could not possibly have been followed in a satisfactory manner given that no AFH providers or AFH residents had ever been informed of such changes or been included in any stakeholder process. I figured there wasn't any chance of a ruling that was so ridiculous, illegal, and unjust could ever stand up to any legal or ethical challenge. Immediately after I learned of this ruling, SHB 1320 was introduced with a section that would exempt AFHs from this ruling. Luckily, it seemed, reason would prevail. Supposedly, everyone supported this until the closing of session when the governor unexpectedly vetoed this particular section. There seems to be confusion as to why this occurred. I requested an explanation from the governor. He did not appear to have much knowledge of how this rule came to be or what the consequences of it were as he just simply explained that he did not intend to take action against the Board's recommendation. He appeared to entrust the Board of Health and Department of Health on this matter. He did, however, state that non-compliance issues with the APA should be directed towards DOH.

Again, I was willing to give the democratic process a chance. It seemed logical to present the issues to the Adult Family Home Advisory Committee, which is staffed by DOH and is supposed to address issues concerning AFHs. This would seem to be the process to eventually present the issue, fully and appropriately, to DOH and the Board of Health. Although this issue had been brought up at an earlier date, no substantive discussion ever occurred. Upon re-introduction of this issue, I was hoping that substantive discussion and action would finally occur. Unfortunately, it did not. In addition to offering the information which I had presented to the governor, I attempted to pose some basic questions and issues that were vital to AFH providers and AFH residents while being pertinent to the duties and interest of the committee. Impact on possible re-definition and re-regulation of AFHs, institutional treatment of homes and residents, inconsistencies and contradictions in rules and laws, the setting of precedence, illegal implementation of rules by not following the APA adequately, and the concern about resident outcomes and resident rights violations were the issues that needed thoughtful discussion and action, but they didn't receive the respect and attention required. Consequently, the issues were not accurately presented to DOH or Board of Health through this process. Now, here we are. I will address DOH and the Board of Health directly as all other forms of the democratic process have failed.

The rule in question is WAC 246-217-010, 4a iii which attempts to define an AFH as a "food service establishment" by including this, "Institutional operations licensed by the department, the state department of social and health services or local health officer, such as schools, hospitals, jails, prisons, nursing homes, boarding homes, adult family homes, and child care facilities."

In attempting to define us as a "food service establishment"(which we are not), this WAC has also re-defined an AFH as an "institutional operation". Although these terms contradict so many laws, rules, ideals, and dearly held philosophies, I would like to point out one simple one...RCW 70.128.005 which is the legislative intent for Adult Family Homes. It states, in part, "Adult Family Homes provide an alternative to institutional care and promote a high degree of independent living for residents." We have fought for years to de-institutionalize the treatment and image of people with Developmental Disabilities. We have worked hard to develop community based

living situations that promote independence and freedom. We have made great progress, yet WAC 246-217-010 undermines years of this progress and calls the chosen, community based “homes” of people with Developmental Disabilities “institutional operations”. The lack of sensitivity in this wording, and the lack of understanding of AFHs(especially those for people with Developmental Disabilities) by placing AFHs under this WAC, is truly mind boggling and offensive.

Some key words that are used appropriately in defining an AFH in applicable rules and laws are “community based”, “regular family abode”, “single family residence”, and “home-like environment” to name a few. We are never to be referred to as “institutional” and there is nowhere in law that we are referred to as a “food service establishment” or part of the “food service industry” as WAC 246-217 so inappropriately attempts.

In addition to the apparent violations and/or contradictions, in WAC 246-217 and its implementation(which I will expand upon further), to state laws and procedures that govern AFHs, there is a federal twist to this. Many AFHs, such as mine, are defined, federally, as “foster care”. An individual who is living in a foster home and who was placed there by an agency of a state or one of its political subdivisions is a qualified foster individual. Any home that provides care for up to 5 adults, or up to 10 children, who are state placed(therefore termed a qualified foster individual), is defined as a “foster home”. This federal definition applies to our home and to the majority of AFHs who exclusively support people with Developmental Disabilities. It is also interesting to note that AFHs are the only form of foster care that are subject to this new rule. Other forms of foster care are not subject to this, nor should they be. Unfortunately, adults with Developmental Disabilities and the elderly have been singled out, had their homes re-defined and re-regulated as “institutional operations” while not being informed of these drastic changes, resulting in an obvious violation of their rights and an undermining of years of progress. Sadly, the issue of discrimination has now come into play.

As for the issue of whether the Administrative Procedures Act(APA) was followed is of keen interest. I have finally received, upon request, information and history pertaining to this specific issue. In DOH’s response to a previous Petition to Repeal, DOH claims to have acted in accordance with the APA. On page 3 of this response, DOH acknowledges that “...adult family home operators and employees were not notified of the rule revision.” Yet, they still justify representative stakeholder input and go on to explain, “the APA does not require that every stakeholder be notified...” This is a huge reach for the department to be claiming APA compliance using this language. In this rule revision involving AFHs, there are two groups of stakeholders that would be most significantly impacted; AFH providers and AFH residents. It is obvious that these stakeholders would have to be notified while doing so would be simple given that these stakeholders should be easily accessible through an already established database. Yet, no one was ever notified. You may not need to notify every stakeholder, but you would most certainly have an obligation to notify the most significantly impacted stakeholders in order to be compliant with the APA. DOH reaches even further(p.3 of same document) by noting that the changes were in the State Register and available upon request. Given that AFHs have never been a part of the “food service industry” and would never fit into the offensive definition of “institutional operation”, there is no reason that any AFH provider or resident would ever think of looking for this rule proposal. The use of this tactic by the department to escape responsibility to the APA and the significantly impacted stakeholders is just insulting.

In this aforementioned document and other documents and rules by DOH and the Board of Health, the AFH is referred to as a food service setting, which we are not. There is no definition governing us in state or federal law that would qualify us as such. Food is present, only in the same manner as it is present in any “single family residence” or “foster care”, neither of which have had this requirement forced upon.

The AFH is a unique setting. AFHs, such as mine, are shared living situations. It is the home of myself, my family, and the people with Developmental Disabilities we support. Any changes require thoughtful consideration to ensure that the legal integrity of the setting and the basic rights of the individuals living there are kept in tact. These considerations were never a part of this process involving WAC 246-217 as the integrity of the setting, the APA, and basic rights were violated. Additionally, the only evaluation of impact by the department that I can find is a relatively inconsequential economic impact evaluation. The fact that people, and their homes, were re-defined and re-regulated as the offensive “institutional operation”, without their knowledge or involvement, and stripped of fair and legal representation and basic rights, without any impact evaluation of this, is significant. AFH providers and AFH residents have been left vulnerable, helpless, and violated by what has transpired here. The democratic process, and the years of progress we have made away from institutional treatment, have been taken away from us here.

Although there is more to the inappropriateness of this ruling and its many implications, the information presented here should be more than enough to suggest that the door on this issue cannot be closed. People and their homes have been re-defined and re-regulated, procedure has not been adequately followed, discrimination has occurred, and rights have been violated. I recognize that the department and board may not have understood the sensitive intricacies of AFHs when implementing this new rule, therefore, giving some explanation for how these oversights occurred. In light of what has been presented here, however, I would expect that the appropriate corrections be made. It takes courage to admit to mistakes and correct them. I ask that the Department of Health and

Board of Health show that necessary courage here. The rule that involves AFHs and the people who live in them must be repealed. The many reasons should be obvious. Thank you.

Sincerely,

Craig Fredrickson
47th legislative district
Adult Family Home Association of WA
DD Committee, Chair

cc. Honorable Governor, Gary Locke
Senator Stephen Johnson, 47th district
Senate Health and LTC Committee
House Health Care Committee
Senator Pat Thibaudeau
Senator Rosa Franklin
Senator Alex Deccio
Representative Tom Campbell
Representative Eileen Cody
Representative Jeannie Darneille
Dennis Braddock, DSHS Secretary
Patricia Lashway, AASA, Director of Residential Care Services
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Adult Family Home Advisory Committee